IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

Bail Appl..No. 6730 of 2007()

CRIME NO.1712/07 OF ALUVA POLICE STATION.

PETITIONER/2ND ACCUSED

CYRIAC K.M., AGED 45 YEARS,
S/O K.T.MATHEW, KULATHIL VEEDU,
KAIPUZHA POST, KOTTAYAM DISTRICT.

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS: COMPLAINANT
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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
ALUVA POLICE STATION.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/11/2007 ALONG WITH B.A.NO.6967/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos. 6730 & 6967 OF 2007

Dated this the 23rd day of November, 2007

ORDER

Applications for anticipatory bail. The petitioners are accused 1 and 2. They face allegations in a crime registered under Sec.420 of the IPC. The crux of the allegations is that the de facto complainant and certain others were induced to part with amounts in favour of the 1st accused, who allegedly handed over such amounts to the 2nd accused, all on the basis of a fraudulent promise that seats in educational institutions shall be secured for the seekers. The de facto complainant was introduced to the 1st accused through the 3rd accused. The de facto complainant had facilitated payment of money by his brother-in-law as well as some other admission seekers to the 1st accused. The 1st accused had allegedly acted in collusion with the 2nd accused and the amounts were handed

over to the 2nd accused. The crime was registered on the basis of a complaint to the police by the de facto complainant. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the 1st and 2nd accused – the petitioners herein, have advanced separate arguments. The learned counsel for the 1st accused contends that the de facto complainant is not the real victim. Even going by his version, he had only facilitated payment of amounts by the admission seekers to the 1st accused. Inasmuch as he is not the one who has been actually deceived, he has no locus to complain. The real victims have not raised any complaint, it is pointed out. In these circumstances, it is prayed that the 1st accused may be granted anticipatory bail.

3. So far as the 2nd accused is concerned, the contention raised is one of total disclaimer of liability. The 2nd accused contends that the 1st accused obviously to avoid blame for himself has unnecessarily pointed the accusing finger at the 2nd accused. He along with some other miscreants had come to the

2nd accused at Kottayam and had forcibly taken the 2nd accused to various places, subjected him to torture, compelled him to execute documents and had later produced him before the police. On his complaint, the Aluva police has registered a crime as Crime No.1713/07 also against the 1st accused and some others. In these circumstances, it is prayed that the 2nd accused may be granted anticipatory bail.

4. The learned counsel for the petitioners submit that the petitioners are absolutely innocent and, in these circumstances, they do not deserve to suffer the trauma of arrest and detention. They may be granted anticipatory bail, it is prayed.

5. The learned Public Prosecutor opposes the applications. The learned Public Prosecutor submits that the available indications clearly show that the 1st accused had collected amounts and had allegedly handed over the same to the 2nd accused. It is true that specific tangible data about the involvement of the 2nd accused has not been secured. But the needle of suspicion is pointed squarely at the 2nd accused. The 2nd accused had lodged a complaint before the police about the

1st accused and others and even the complaint in that crime does not at all help the 2nd accused to claim absolute exoneration.

6. At the request of the Court, the Case Diaries in both the crimes – Crime Nos.1712 & 1713/07, have been placed before me for my perusal. I have gone through the same. At this early stage of the investigation, I shall not embark on a detailed discussion about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that an anxious consideration of the rival contentions in the light of the perusal of the Case Diaries does persuade me to take the view that there are no features in these cases which can persuade this Court to invoke the extraordinary equitable discretion under Sec.438 of the Cr.P.C. The fact that accused 1 and 2 were not arrested earlier by the police even though they may have been available for arrest does not at all persuade me to invoke the jurisdiction under Sec.438 of the Cr.P.C. in favour of the petitioners. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must resort to the normal and ordinary course of appearing before the Investigating Officer or the learned

Magistrate having jurisdiction and then seek regular bail in the usual course.

7. In the result, these bail applications are dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R. BASANT, JUDGE)

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